

WASTE MANAGEMENT AND RADIATION CONTROL BOARD

Executive Summary

Administrative Rulemaking

Change in a Previously Proposed Rule Change – R313-22-35

March 10, 2016

What is the issue before the Board?	An additional change needs to be made to R313-22-35, <i>Financial Assurance and Recordkeeping for Decommissioning</i> , based on a comment received from the U.S. Nuclear Regulatory Commission (NRC). (See attached NRC letter.)
What is the historical background or context for this issue?	<p>On December 10, 2015, the Board approved filing with the Division of Administrative Rules and publication in the <i>Utah State Bulletin</i>, proposed changes to R313-22, <i>Specific Licenses</i>, together with other proposed changes to R313-15, R313-19 and R313-24. Changes to these rules were required in order to maintain regulatory compatibility with the NRC by incorporating federal decommissioning planning regulations promulgated by the U.S. Nuclear Regulatory Commission (NRC) on June 17, 2011. (76 FR 35512). However, the comment from the NRC only affects a paragraph in Section R313-22-35.</p> <p>NRC requested the following noted change to paragraph R313-22-35(5)(a)(C):</p> <p style="padding-left: 40px;">(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination;</p> <p style="padding-left: 40px;">(See yellow highlighted text in the rule following this Executive Summary.)</p>
What is the governing statutory or regulatory citation?	The Board is authorized under Subsection 19-3-104(4)(b) to make rules to meet the requirements of federal law and maintain program primacy (Agreement State status) from the federal government (NRC). The proposed rulemaking action also meets the Utah's rulemaking procedures under 63G-3, Utah Administrative Rulemaking Act, Utah Code Annotated and the associated implementing rules of R15, Utah Admin. Code.
Is Board action required?	Yes. Approval to file a Change in a Proposed Rule to R313-22 with the Division of Administrative Rules is needed to address NRC's requested change and maintain compatibility with the corresponding federal radioactive materials regulations.
What is the Division Director's recommendation?	The Director recommends the Board approve the additional change to R313-22-35, as requested by the NRC, by filing a Change in a Proposed Rule for publication in the <i>Utah State Bulletin</i> and setting an effective date of May 9, 2016 for all changes to R313-22.
Where can more information be obtained?	For questions or additional information, please contact Rusty Lundberg at (801) 536-4257 or rlundberg@utah.gov .

NOTICE OF
CHANGE IN PROPOSED RULE

- The agency identified below in box 1 provides notice of proposed rule change pursuant to Utah Code Section 63G-3-301.
- Please address questions regarding information on this notice to the agency.
- The full text of all rule filings is published in the Utah State Bulletin unless excluded because of space constraints.
- The full text of all rule filings may also be inspected at the Division of Administrative Rules.

Rule Information				
DAR file no:	39991	Date filed:		
State Admin Rule Filing Key:	157265			
Utah Admin. Code ref. (R no.):	R313-22			
Agency Information				
1. Agency:	ENVIRONMENTAL QUALITY - Waste Management and Radiation Control, Radiation			
Room no.:	Third Floor			
Building:				
Street address 1:	195 N 1950 W			
Street address 2:				
City, state, zip:	SALT LAKE CITY UT 84116-3085			
Mailing address 1:	PO BOX 144850			
Mailing address 2:				
City, state, zip:	SALT LAKE CITY UT 84114-4850			
Contact person(s):				
Name:	Phone:	Fax:	E-mail:	Remove:
Rusty Lundberg	\$01-536-4257	\$01-533-4097	rlundberg@utah.gov	
(Interested persons may inspect this filing at the above address or at DAR during business hours)				
Rule Title				
2. Title of rule or section (catchline):				
Specific Licenses				
Notice Type				
3. Type of notice: Change in Proposed Rule				
Changes DAR No.: 39991				
(If you do not know the DAR no., call 801-538-3218.)				
Rule Purpose				
4. Purpose of the rule or reason for the change:				
As an Agreement State with the U.S. Nuclear Regulatory Commission (NRC), Utah is required to have and maintain rules regarding radioactive materials that are compatible with the corresponding NRC radioactive materials regulations. The NRC reviewed the proposed changes for compatibility and provided a comment requesting a change to the originally proposed rule changes. The proposed rule change incorporates the NRC requested change and will result in the state rule being compatible with the corresponding NRC regulation.				
Response Information				
5. This change is a response to comments by the Administrative Rules Review Committee.				
<input checked="" type="radio"/> No <input type="radio"/> Yes				
Rule Summary				
6. Summary of the rule or change:				
The proposed rule change incorporates the NRC requested change by deleting the phrase "to meet the criteria for license termination" from paragraph R313-22-35(5)(a)(i)(C). Removing this text will make the state rule compatible with the corresponding NRC regulation, as found in 10 CFR 70.25(e)(1)(C).				
Aggregate Cost Information				
7. Aggregate anticipated cost or savings to:				
A) State budget:				
Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes				
The proposed change does not have any state fiscal or budgetary impact.				

<http://erules.rules.utah.gov/erules/ruleFilingEdit.action?ruleId=157265>

2/18/2016

<p>B) Local government:</p> <p>Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes</p> <p>The proposed change does not have any fiscal impact to local government.</p> <p>C) Small businesses:</p> <p>Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes</p> <p>("small business" means a business employing fewer than 50 persons)</p> <p>The proposed change does not have any fiscal impact on small businesses.</p> <p>D) Persons other than small businesses, businesses, or local government entities:</p> <p>Affected: <input checked="" type="radio"/> No <input type="radio"/> Yes</p> <p>("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)</p> <p>The proposed change does not have any fiscal impact to other entities not addressed by the preceding sections.</p>
<p>Compliance Cost Information</p> <p>8. Compliance costs for affected persons:</p> <p>There are no compliance costs to radioactive materials licensees as a result of the proposed rule change.</p>
<p>Department Head Comments</p> <p>9. A) Comments by the department head on the fiscal impact the rule may have on businesses:</p> <p>As a change that simply removes supplementary text that is not compatible with the corresponding NRC regulation, there is no fiscal, administrative, or operational impacts associated with the proposed rule change.</p> <p>B) Name and title of department head commenting on the fiscal impacts:</p> <p>Alan Matheson, Executive Director</p>
<p>Citation Information</p> <p>10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.</p> <p>State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :</p> <p>19-3-104, 42 USC 2021</p>
<p>Incorporated Materials</p> <p>11. This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :</p> <div style="border: 1px solid black; padding: 10px; text-align: center;"> <p>Official Title of Materials Incorporated (from title page)</p> <p>Publisher</p> <p>Date Issued (mm/dd/yyyy)</p> <p>Issue, or version (including partial dates)</p> <p>ISBN Number</p> <p>ISSN Number</p> <p>Cost of Incorporated Reference</p> <p>Adds, updates, removes-- SELECT ONE --</p> </div>
<p>Comments</p> <p>12. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)</p> <p>A) Comments will be accepted until 5:00 p.m. on (mm/dd/yyyy) :</p> <p>B) A public hearing (optional) will be held:</p> <p>On (mm/dd/yyyy): At (hh:mm AM/PM): At (place):</p>
<p>Proposed Effective Date</p> <p>13. This rule change may become effective on (mm/dd/yyyy):</p> <p>NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After a minimum of seven days following the date designated in Box 12(A) above, the agency must submit a Notice of Effective Date to the Division of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.</p>

Indexing Information		
14. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")): specific licenses, radioactive materials, decommissioning		
File Information		
15. Attach an RTF document containing the text of this rule change (filename): There is a document associated with this rule filing.		
To the Agency		
Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the Utah State Bulletin, and delaying the first possible effective date.		
Agency Authorization		
Agency head or designee, and title:	Brad Johnson Deputy Director	Date (mm/dd/yyyy): 02/18/2016

[NOTE: The change requested by the NRC is highlighted in yellow. All other marked changes were previously approved by the Board on December 10, 2015 to receive public comment and will remain unchanged and become effective at the same time the additional change highlighted in yellow becomes effective. Based on Board approval at the March 10, 2016 meeting, the earliest effective date for all changes will be May 9, 2016.]

R313. Environmental Quality, Radiation Control.

R313-22. Specific Licenses.

R313-22-35. Financial Assurance and Recordkeeping for Decommissioning.

(1)(a) Applicants for a specific license authorizing the possession and use of unsealed radioactive material of half-life greater than 120 days and in quantities exceeding 10^5 times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall also be submitted when a combination of radionuclides is involved if R divided by 10^5 is greater than one, where R is defined here as the sum of the ratios of the quantity of each radionuclide to the applicable value in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference.

(b) Holders of, or applicants for, a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in Appendix B of 10 CFR 30.1 through 30.72, 2010, which is incorporated by reference, or when a combination of isotopes is involved if R, as defined in Subsection R313-22-35(1)(a), divided by 10^{12} is greater than one, shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(c) Applicants for a specific license authorizing the possession and use of more than 100 mCi of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection R313-22-35(5).

(2) Applicants for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection R313-22-35(4), or authorizing the possession and use of source material greater than 10 mCi but less than or equal to 100 mCi in a readily dispersible form shall either:

(a) submit a decommissioning funding plan as described in Subsection R313-22-35(5); or

(b) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection R313-22-35(4) using one of the methods described in Subsection R313-22-35(6). Applicants for a specific license authorizing the possession and use of source material in a readily dispersible form shall submit a certification that financial assurance for decommissioning has been provided in the amount of \$225,000 by October 20, 2007. For an applicant subject to this subsection, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but before the receipt of licensed material. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6) shall be submitted to the Director before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit to the Director, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements in Subsection R313-22-35(6).

(3)(a) Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1) or (2), shall provide financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(b) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(1), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in an amount at least equal to \$1,125,000 in accordance with the criteria set forth in Section R313-22-35. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan, the licensee shall include a decommissioning funding plan in any application for license renewal.

(c) Holders of a specific license issued before October 20, 2006, and of a type described in Subsection R313-22-35(2), shall submit by October 20, 2007, a decommissioning funding plan as described in Subsection R313-22-35(5) or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Section R313-22-35.

(d) A licensee who has submitted an application before October 20, 2006, for renewal of license in accordance with Section R313-22-37, shall provide financial assurance for decommissioning in accordance with Subsections R313-22-35(1) and (2).

(e) Waste collectors and waste processors, as defined in Appendix G of 10 CFR 20.1001 to 20.2402, [2010]2015, which is incorporated by reference, shall provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection R313-22-35(5). The decommissioning funding plan shall include the cost of disposal of the maximum amount (curies) of radioactive material permitted by the license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of Rule R313-15.

(f) If, in surveys made under R313-15-501(1), residual radioactivity in the facility and environment, including the subsurface, is detected at levels that would, if left uncorrected, prevent the site from meeting the R313-15-402 criteria for unrestricted use, the licensee shall submit a decommissioning funding plan within one year of when the survey is completed.

~~[(f)](g)~~ Holders of a specific license issued prior to October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)~~[(g)](h)~~, shall submit a decommissioning funding plan to the Director on or before October 20, 2007. Holders of a specific license issued on or after October 20, 2006, which is of a type described in Subsections R313-22-35(1), (2), or (3)~~[(g)](h)~~, shall submit a decommissioning funding plan to the Director as a part of the license application.

~~[(g)](h)~~ Applicants for a specific license authorizing the possession and use of radioactive materials in sufficient quantities that require financial assurance and recordkeeping for decommissioning under Section R313-22-35 shall assure that all documents submitted to the Director for the purpose of demonstrating compliance with financial assurance and recordkeeping requirements meet the applicable criteria contained in the Nuclear Regulatory Commission's document NUREG-1757, Volume 3, "Consolidated NMSS Decommissioning Guidance: Financial Assurance, Recordkeeping, and Timeliness" (9/2003).

~~[(h)](i)~~ Documents provided to the Director under Subsection R313-22-35(3)~~[(g)](h)~~ shall provide that legal remedies be sought in a court of appropriate jurisdiction within Utah.

(4) Table of required amounts of financial assurance for decommissioning by quantity of material. Licensees required to submit an amount of financial assurance listed in this table must do so during a license application or as part of an amendment to an existing license. Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

TABLE

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^4 is greater than one but R divided by 10^5 is less than or equal to one:	\$1,125,000
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in unsealed form. For a combination of radionuclides, if R, as defined in Subsection R313-22-35(1)(a) divided by 10^3 is greater than one but R divided by 10^4 is less than or equal to one:	\$225,000
Greater than 10^{10} but less than or equal to 10^{12} times the applicable quantities of radioactive material, as defined in Appendix B of 10 CFR 30.1 through 30.72 (2010) which is incorporated by reference, in sealed sources or plated foils. For combination of radionuclides, if R, as defined in R313-22-35(1)(a), divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one:	\$113,000

~~(5)(a) [A decommissioning funding plan shall contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from Subsection R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility. Cost estimates shall be adjusted at intervals not to exceed 3 years. The decommissioning funding plan shall also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning and a signed original of the financial instrument obtained to satisfy the requirements of Subsection R313-22-35(6).] Each decommissioning funding plan shall be submitted for review and approval and shall contain-~~

- ~~(i) A detailed cost estimate for decommissioning, in an amount reflecting:~~
- ~~(A) The cost of an independent contractor to perform all decommissioning activities;~~

(B) The cost of meeting the R313-15-402 criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of R313-15-403, the cost estimate may be based on meeting the R313-15-403 criteria;

(C) The volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination; and

(D) An adequate contingency factor.

(ii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

(iii) A description of the method of assuring funds for decommissioning from R313-22-35(6), including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

(iv) A certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(v) A signed original of the financial instrument obtained to satisfy the requirements of R313-22-35(6), unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning.

(b) At the time of license renewal and at intervals not to exceed three years, the decommissioning funding plan shall be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan shall update the information submitted with the original or prior approved plan, and shall specifically consider the effect of the following events on decommissioning costs:

(i) Spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(ii) Waste inventory increasing above the amount previously estimated;

(iii) Waste disposal costs increasing above the amount previously estimated;

(iv) Facility modifications;

(v) Changes in authorized possession limits;

(vi) Actual remediation costs that exceed the previous cost estimate;

(vii) Onsite disposal; and

(viii) Use of a settling pond.

(6) Financial assurance for decommissioning shall be provided by one or more of the following methods:

(a) Prepayment. Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets so that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities;

(b) A surety method, insurance, or other guarantee method. These methods shall guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(8). A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of Section R313-22-35. A guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Subsection R313-22-35(9). A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of Section R313-22-35 or in any situation where the applicant or licensee has a parent company holding majority

control of the voting stock of the company. A surety method or insurance used to provide financial assurance for decommissioning shall contain the following conditions:

(i) the surety method or insurance shall be open-ended or, if written for a specified term, such as five years, shall be renewed automatically unless 90 days or more prior to the renewal date the issuer notifies the Director, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance shall also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the Director within 30 days after receipt of notification of cancellation,

(ii) the surety method or insurance shall be payable to a trust established for decommissioning costs. The trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency, and

(iii) the surety method or insurance shall remain in effect until the Director has terminated the license;

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions shall be as stated in Subsection R313-22-35(6)(b);

(d) In the case of Federal, State or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on the Table in Subsection R313-22-35(4) and indicating that funds for decommissioning will be obtained when necessary; or

(e) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

(7) Persons licensed under Rule R313-22 shall keep records of information important to the decommissioning of a facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), licensees shall transfer all records described in Subsections R313-22-35(7)(a) through (d) to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the Director considers important to decommissioning consists of the following:

(a) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations;

(b) as-built drawings and modification of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(c) except for areas containing only sealed sources, provided the sources have not leaked or no contamination remains after a leak, or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, including all of the following:

(i) all areas designated and formerly designated as restricted areas as defined under Section R313-12-3;

(ii) all areas outside of restricted areas that require documentation under Subsection R313-22-35(7)(a);

(iii) all areas outside of restricted areas where current and previous wastes have been buried as documented under Section R313-15-1109; and

(iv) all areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in Sections R313-15-401 through R313-15-406, or apply for approval for disposal under Section R313-15-1002; and

(d) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

(8) Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), the parent company shall meet one of the following criteria:

(i) The parent company shall have all of the following:

(A) Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

(B) Net working capital and tangible net worth each at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used;

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if a certification is used; or

(ii) The parent company shall have all of the following:

(A) A current rating for its most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(B) Tangible net worth at least six times the current decommissioning cost estimate, or prescribed amount if a certification is used;

(C) Tangible net worth of at least \$10 million; and

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates, or prescribed amount if certification is used.

(b) The parent company's independent certified public accountant shall have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the licensee shall inform the Director within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

(c)(i) After the initial financial test, the parent company shall repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(ii) If the parent company no longer meets the requirements of Subsection R313-22-35(8)(a) the licensee shall send notice to the Director of intent to establish alternative financial assurance as specified in Section R313-22-35. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee shall provide alternate financial assurance within 120 days after the end of such fiscal year.

(d) The terms of a parent company guarantee which an applicant or licensee obtains shall provide that:

(i) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the Director, as evidenced by the return receipts.

(ii) If the licensee fails to provide alternate financial assurance as specified in Section R313-22-35 within 90 days after receipt by the licensee and Director of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(iii) The parent company guarantee and financial test provisions shall remain in effect until the Director has terminated the license.

(iv) If a trust is established for decommissioning costs, the trustee and trust shall be acceptable to the Director. An acceptable trustee includes an appropriate State or Federal Government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(9) Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning.

(a) To pass the financial test referred to in Subsection R313-22-35(6)(b), a company shall meet all of the following criteria:

(i) Tangible net worth at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(ii) Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate, or the current amount required if certification is used, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(iii) A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's, or Aaa, Aa, or A as issued by Moody's.

(b) To pass the financial test, a company shall meet all of the following additional requirements:

(i) The company shall have at least one class of equity securities registered under the Securities Exchange Act of 1934;

(ii) The company's independent certified public accountant shall have compared the data used by the company in the financial test which is derived from the independently audited, yearend financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the Director within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test; and

(iii) After the initial financial test, the company shall repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(c) If the licensee no longer meets the requirements of Subsection R313-22-35(9)(a), the licensee shall send immediate notice to the Director of its intent to establish alternate financial assurance as specified in Section R313-22-35 within 120 days of such notice.

(d) The terms of a self-guarantee which an applicant or licensee furnishes shall provide that:

(i) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the Director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the Director, as evidenced by the return receipt.

(ii) The licensee shall provide alternative financial assurance as specified in Section R313-22-35 within 90 days following receipt by the Director of a notice of a cancellation of the guarantee.

(iii) The guarantee and financial test provisions shall remain in effect until the Director has terminated the license or until another financial assurance method acceptable to the Director has been put in effect by the licensee.

(iv) The licensee shall promptly forward to the Director and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of section 13 of the Securities and Exchange Act of 1934.

(v) If, at any time, the licensee's most recent bond issuance ceases to be rated in a category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the Director within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of A or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Subsection R313-22-35(9)(a).

(vi) The applicant or licensee shall provide to the Director a written guarantee, a written commitment by a corporate officer, which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the Director, the licensee shall set up and fund a trust in the amount of the current cost estimates for decommissioning.

KEY: specific licenses, decommissioning, broad scope, radioactive materials

Date of Enactment or Last Substantive Amendment: August 26, 2015

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

February 8, 2016

Mr. Scott Anderson, Director
Division of Waste Management and Radiation Control
Utah Department of Environmental Quality
195 North 1950 West
P.O. Box 14485
Salt Lake City, UT 84116

Dear Mr. Anderson

We have reviewed the proposed revisions to the Utah Radiation Control Rules received by our office on January 13, 2016. These regulations were reviewed by comparison to the equivalent U.S. Nuclear Regulatory Commission (NRC) rules and the requirements of the one amendment identified in the enclosed State Regulation Status (SRS) Data Sheet. We discussed our review of the regulations with Rusty Lundberg on February 3, 2016.

As a result of our review, we have one comment that has been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety. Under our current procedure, a finding that the Utah regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Utah regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comment and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Nuclear Material Safety and Safeguards (NMSS) Procedure SA-200, "Compatibility Categories and Health and Safety Identification for NRC Regulations and Other Program Elements."

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in NMSS Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Material Safety, State, Tribal, and Rulemaking Programs, NMSS.

The SRS Data Sheet summarizes our knowledge of the status of other Utah regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the NMSS State Communication Portal: <https://scp.nrc.gov/rulemaking.html>.

S. Anderson

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If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Michelle Beardsley State Regulation Review Coordinator, at (610) 337-6942 (Michelle.Beardsley@nrc.gov) or Lizette Roldán-Otero at (817) 200-1596 (Lizette.Roldan@nrc.gov).

Sincerely,

/RA Paul Michalak for/

Pamela J. Henderson, Deputy Director
Division of Material Safety, State, Tribal
and Rulemaking Programs
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Compatibility Comment
2. Utah SRS Data Sheet

COMPATIBILITY COMMENT ON UTAH PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	313-22-35(5)(A)	70.25(e)	2011-1	H&S	<p>Financial assurance and recordkeeping for decommissioning</p> <p>Utah adds the phrase, "to meet the criteria for license termination" at the end of their equivalent regulation to 10 CFR Part 70.25(e)(1)(i)(C).</p> <p>Utah needs to delete the phrase "to meet the criteria for license to termination" because this regulation is requiring the licensee to meet the criteria in the decommissioning plan.</p> <p>Utah needs to make the change indicated above in order to meet the Compatibility Category H&S designation assigned to 10 CFR Part 70.25(e).</p>